

UNITED STATES OF AMERICA,)	2:07-CR-0066 JCM (GWF)
)	Related Case 2:09-CV-1764 JCM
Plaintiff,)	
)	
vs.)	
)	
MAURICE DONNELL COOPER,)	
)	
Defendant.)	
)	

Presently before the court is petitioner Maurice Donnell Cooper's motion for reconsideration (doc. # 100) and his motion for appointment of counsel (doc. # 101). The court did not order the government to respond to the instant motions.

On September 9, 2009, petitioner filed a § 2255 motion stating twenty grounds for relief. (Doc. # 68). Eighteen of the claims involved assignments of error that petitioner could have raised on direct appeal. (Doc. # 68, 1-18). The nineteenth claim asserted that appellate counsel was ineffective for failing to raise the first eighteen claims. (Doc. # 68, 19). The twentieth claim was for ineffective assistance of appellate counsel for failure to timely inform petitioner of denial of the appeal. (Doc. # 68, 19). On April 16, 2010, the court found the first eighteen claims to be procedurally defaulted, and denied the two other claims on the merits. (Doc. # 79).

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On April 23, 2010, petitioner appealed this court's denial of his § 2255 motion. (Doc. # 80). On March 23, 2012, the Ninth Circuit issued an order vacating this court's order and remanding the case to this court. (Doc. # 93). The Ninth Circuit had previously issued a certificate of appealability to determine whether this court "erred in summarily dismissing [petitioner's] 28 U.S.C. § 2255 motion as procedurally defaulted and on the merits without first providing [petitioner] with notice of the default and an opportunity to respond and/or requiring a response from [the government]." (Doc. # 93). The order on mandate has been entered on the docket. (Doc. # 96).

On June 27, 2012, this court ordered the government to file a response to petitioner's claims within 30 days of entry of the order. Further, the court permitted petitioner 30 days from the date of the government's response to file a reply. (Doc. # 97). On July 24, 2012, the government filed its response (Doc. # 98). Petitioner did not file a reply.

On November 8, 2012, this court issued an order denying petitioner's motion to vacate under § 2255 because petitioner did not establish cause and prejudice to excuse his procedural default. (Doc. # 99). On December 6, 2012, petitioner filed the instant motion to reconsider (doc. # 100), and motion for appointment of counsel (doc. # 101).

II. Legal Standard

A basic principle of federal practice is that courts generally refuse to reopen decided matters. *Magnesystems, Inc. v. Nikken*, 933 F.Supp. 944, 948 (C.D.Cal. 1996). Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A reconsideration motion "should not be granted, absent highly unusual circumstances." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (per curiam), cert. denied 490 U.S. 1059, 109 S.Ct. 1972, 104 L.Ed.2d 441 (1989); see *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed.Cir.2004) (reconsideration motions must be supported "by a showing of extraordinary circumstances which justify relief"). "To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *United States v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D.Cal. 2001).

1 When reviewing a motion to reconsider the denial of a 2255 petition, the district court should
 2 consider any new evidence, change in law, clear error, or manifest injustice. *See Culler v. Board of*
 3 *Prison Terms*, 405 Fed.Appx. 263, 264 (“The district court also did not abuse its discretion when
 4 denying Culler’s motions for reconsideration since Culler did not identify any new evidence, change
 5 in law, clear error, or manifest injustice.”) (discussing § 2254 habeas petitions) (unpublished); *see*
 6 *also United States v. Cobar*, 2:07-CR-0014-JCM-RJJ, 2012 WL 3882200 (D. Nev. Sept. 6, 2012).

7 **III. Discussion**

8 Petitioner has requested that the court reconsider its order dismissing his § 2255 motion.
 9 Petitioner’s motion for reconsideration sets forth a myriad of reasons as to why plaintiff was unable
 10 to file a reply demonstrating cause and prejudice despite the court’s generous allotment of time in
 11 which to do so. Petitioner states that he did not file a reply because “was ‘forced’ to seek protection
 12 within the Federal Bureau of Prisons” by checking into protective custody, and that he is “continually
 13 being faced with ‘life threatening’ circumstances.” (Doc. # 100).

14 As an initial matter, the court notes that it is appropriate to deny petitioner’s motion to
 15 reconsider as he did not identify any new evidence, change in law, clear error, or manifest injustice.
 16 *See Culler*, 405 Fed.Appx. at 264. The circumstances alleged in petitioner’s motion are not grounds
 17 that warrant reconsideration but instead appear to be dissatisfaction with the Bureau of Prisons which
 18 should be pursued in a forum other than his motion for reconsideration.

19 Further, even if the alleged circumstances are true, petitioner has failed to establish cause and
 20 prejudice as was required to counter this court’s dismissal of his § 2255 motion. Petitioner has failed
 21 to show why these alleged circumstances affected his ability to submit a reply. Petitioner has stated
 22 only that a “timely reply to the governments [*sic*] response is ‘minoot’ [*sic*] when dealing with
 23 ‘exigent’ and possibly life threatening circumstances, in addition to the fact that ‘the governments
 24 [*sic*] response’ is ‘moot’ and not worthy of petitioners [*sic*] reply.” (Doc. # 100, 6).

25 The court gave petitioner ample time to submit a reply. The court ordered petitioner to file
 26 a reply within 30 days of the government’s response, but allowed over 90 days before entering its
 27 order to dismiss petitioner’s § 2255 motion. (Doc. # 99). Therefore, because petitioner failed to
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1 provide cause and prejudice, even in the instant motion, and because petitioner has failed to show
2 why the court should reconsider its order dismissing petitioner's § 2255 motion, the court denies the
3 instant motion.

4 **IV. Conclusion**

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that petitioner's motion for
7 reconsideration (doc. # 100) be, and the same hereby is, DENIED.

8 Provided that the motion to reconsider has been denied and there is no need for counsel in
9 this closed case, IT IS THEREFORE ORDERED that petitioner's motion for appointment of counsel
10 (doc. # 101) be, and the same hereby is, DENIED as moot.

11 DATED May 6, 2013.

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15 **UNITED STATES DISTRICT JUDGE**
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